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09/733,190	12/08/2000	Eric S. Michlowitz	M-9865 US	3158
33438	7590	10/04/2005	EXAMINER	
HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720			STERRETT, JONATHAN G	
			ART UNIT	PAPER NUMBER
			3623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

## *16*

### Office Action Summary

Application No.	Applicant(s)	
09/733,190	MICHLOWITZ ET AL.	
Examiner	Art Unit	
Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 August 2005.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 and 14-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-11 and 14-22 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## DETAILED ACTION

1. This Final Office Action is responsive to applicant's amendment filed August 18, 2005. **Claims 12 and 13** have been cancelled. Currently **Claims 1-11 and 14-22** are pending.

### *Response to Amendment*

2. Applicant's arguments filed on February 7, 2005 with respect to **Claims 1-11 and 14-22** have been considered but are not persuasive.

The applicant argues on page 8 line 12-13 that Powers does not disclose that one of the types of user is the actual supplier or vendor being evaluated. In response, the examiner respectfully disagrees, because Powers does teach in paragraph 51 line 13-17 that the service manager and the various levels of the service organization (i.e. supplier) have access to the rating system. Also in paragraph 56 line 5-7, the various evaluative elements (questions, performance areas and guidelines) are used to generate performance evaluations for members of the performance evaluation system, including the service organization (i.e. supplier) discussed above. Paragraph 58 line 1-4 illustrates various evaluative questions that may be used to evaluate members of the service organization.

The evaluation of the service organization is provided by users of the system which includes the service organization itself (see paragraph 44 line 9, service manager, i.e. supplier). The service organization is a supplier because it is supplying a service to the remainder of the organization and thus is a supplier.

The applicant is reminded that the MPEP (2111[R]) is very clear that "though understanding the claim language may be aided by explanations contained in the written description, **it is important not to import into a claim limitations that are not part of the claim** (*emphasis added*). For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment."); E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003).

The definition of the term supplier in its broadest scope can include a member of the same organization that is providing a service to the rest of the organization.

In addition, applicant further argues beginning on the last two lines of page 8 and continuing through to page 10, in referring to Armstrong in addressing his arguments. However, Armstrong is not the prior art of record for the Office Action dated 5-18-2005 (the most recent Office Action). Powell is the prior art of record for the Office Action dated 5-18-2005. These arguments are thus moot in view of the new grounds of rejection provided by the Office Action dated 5-18-2005.

***.Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-3, 9, 14 and 21** are rejected under 35 U.S.C. 102(e) as being anticipated by **Powers US 2002/0040309**.

Regarding **Claim 1**, Powers discloses:

**receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website,**  
paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Paragraph 44 line 2-6, 11, Users use the performance evaluation system to enter evaluations into the system.

Paragraph 28 line 1-2, the system provides average scores for a particular member or level of the organization. An average evaluation score would include at least a first evaluation. Also paragraph 29 line 6-8, scores for users and hierarchy levels are charted. The plurality of evaluation scores entered into the system means that at least a first evaluation would be entered. Figure 2 shows a plurality of users who would enter evaluations into system.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

**receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website.**

Paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Figure 2 #104, product manager is a user of the system. The rest of Figure 2 shows a plurality of users who would enter evaluations into the system.

Paragraph 44 line 2-6, 11, product B manager (user 35) can use the performance evaluation system to enter evaluations. The users are the people in the system that perform the evaluations.

Paragraph 28 line 1-2, the system provides average scores for a particular member or level of the organization. An average evaluation score would include a second evaluation. Also paragraph 29 line 6-8, scores for users and hierarchy levels are charted. The plurality of evaluation scores entered into the system means that at least a second evaluation would be entered.

Paragraph 24 line 2-5, web pages can be downloaded to interface with invention.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

**receiving a third evaluation of the supplier submitted by the supplier into a customer website,**

Paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Figure 2 #104, product manager is a user of the system.

Paragraph 44 line 2-6, 9, service manager (user 10) can use the performance evaluation system to enter evaluations. The service manager is head of a group that supplies service to the rest of the organization.

Figure 2, the service organization contains three members, a service manager (user 10), and service agents (users 11 and 12). A service manager evaluating the service organization would include providing at least a third evaluation.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

**and generating an indicia of a supplier's performance based on the first, second and third evaluation.**

paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Paragraph 28 line 1-2, summary reports provide average scores for a particular organizational level, including for a supplier. The average scores are based on the input evaluations, including for a first, second and third evaluation combined.

Regarding **Claim 2**, Powers discloses:

**generating and providing a report representing the indicia of the supplier's performance**

Paragraph 105 line 3-4, system generates and provides reports and charts based on entered evaluation data.

Regarding **Claim 3**, Powers discloses:

**providing access for the supplier to view electronically the indicia of the performance of the supplier's performance.**

Paragraph 24 line 2-5, user interface allows web pages to be displayed.

Paragraph 29 line 6-8, productivity and quality scores are provided for hierarchical levels being evaluated, including for servicing and supplier organizations.

**Claim 9** is rejected under the same rationale as **Claim 1**.

**Claim 14** is rejected under the same rationale as **Claim 1**.

**Claim 21** is rejected under the same rationale as **Claim 1**.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 4-8, 10-11 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Powers US 2002/0040309** in view of PRTM's Performance

Management Group benchmarking service (referred to hereafter as **PRTM**) as disclosed in the following documents:

Supply Chain Council's webpage newsletter of November 1998 describing PRTM's online supply-chain benchmarking, pages 4-5, hereafter referred to as **Reference A.**

PRTM's webarchive.org webpage of December 5, 1998; page 3 that details PRTM's supply chain benchmarking approach, hereafter referred to as **Reference B.**

Supply Chain Council Presentation of May 12, 1999 by Scott Stephens detailing the Supply Chain Operations Reference Model. Note footnote on page 8 that PRTM organized the Supply Chain Council. This Reference hereafter known as **Reference C.**

PRTM press release, "High-Tech Management Consultants PRTM Launch Online Benchmarking Company", March 1999, pp.1-2. This Reference hereafter known as **Reference D.**

PRTM press release, "University of Michigan/OSAT and The Performance Measurement Group Launch a New Benchmarking Initiative for the Automotive Industry", January 21, 2000. This Reference hereafter known as **Reference E.**

Regarding **Claim 4**, Powers does not teach:  
**providing access for the supplier to view electronically an indicia of the performance of all suppliers in a class of components**

PRTM teaches:

**providing access for the supplier to view electronically an indicia of the performance of all suppliers in a class of components.**

Reference B page 1 paragraph 6, suppliers benchmarked in a class of components include 'computers and electronic equipment' and 'semiconductors'.

Reference D page 1 paragraph 2 line 3-6, participants can receive benchmarking data reports online to view an indicia of the performance of all suppliers.

Reference A page 5 paragraph B line 3, PRTM's benchmarking provides comparative performance data for a variety of industries.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding entering supplier evaluations, to include providing access to a supplier to view an indicia of suppliers in a class of components, as taught by PRTM, because it would lead to improvements in supply chain performance through providing full visibility into the strengths and weaknesses of a manufacturing operation.

Regarding **Claim 5**, Powers does not teach:

**communicating an indicia of the performance of the supplier to members of a manufacturing organization.**

PRTM teaches:

**communicating an indicia of the performance of the supplier to members of a manufacturing organization.**

Reference D page 1 paragraph 1 line 5, supply chain performance is benchmarked and reports are provided to clients.

Reference B page 3 paragraph d line 1-2, metrics are provided in the benchmark study for the entire manufacturing enterprise, including to members of a manufacturing organization.

Reference B page 1 paragraph 2 line 4 – paragraph 3 line 1-2, PRTM provides performance measurement information as part of their benchmarking process.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11). This occurs because benchmarking indicates how a supplier performs in comparison to other suppliers and reveals particular areas where improvements are needed.

Communicating the results of a supply chain benchmarking effort, as taught by PRTM, to members of a manufacturing organization is part of their benchmarking process.

Reference C page 22 illustrates a SCOR Level 1 scorecard which is used for this

purpose since it is a summary of top level supply chain performance metrics used to communicate supply chain performance.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding entering supplier evaluations, to include communicating the performance of a supplier to members of a manufacturing organization because it would lead to improvements in supply chain performance through providing full visibility into the strengths and weaknesses of supply chain performance.

Regarding **Claim 6**, Powers does not teach:

**analyzing the performance of a supplier based on the performance of the best supplier in the class of suppliers.**

PRTM teaches:

**analyzing the performance of a supplier based on the performance of the best supplier in the class of suppliers.**

Reference C page 22 Item 5, "Superior" category in Level 1 performance scorecard constitutes 'best in class' performance for that particular metric or indicia. The Level 1 scorecard provides an analysis of 'best in class' and also a range of

performance from parity to superior in a category to provide an analysis of where a particular supplier performs in respect to that particular metric.

Reference A page 5 paragraph B line 3, comparative performance data from companies would provide analysis of supplier performance based on best and worst suppliers in a class of suppliers.

Reference C page 23, the chart on this page shows "BIC" or "Best in Class" analysis for various suppliers in a class of suppliers, eg 'computers' and 'telecom'.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11). This occurs because benchmarking indicates how a supplier performs in comparison to other suppliers and reveals particular areas where improvements are needed. Analyzing the performance of the best supplier in a group of suppliers, as taught by PRTM, is a part of their benchmarking process. Reference C page 23 illustrates an analysis of various 'best in class' or BIC suppliers in various measures of supply chain performance. For example, BIC order fulfillment lead time (OFLT) for Industrial Companies declined from 9 days in 1996 to 4 days in 1997. Average OFLT for the same period ranges from 42 to 30 days respectively. The chart shows that there is a wide variation between an average company in the Industrial group and a BIC company. Analyzing the performance across the spectrum of supply chain metrics, as taught by PRTM, shows

where a company is weakest and where efforts need to be concentrated to improve supply chain management performance.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding evaluation of suppliers to include analyzing BIC performance of a supplier, as taught by PRTM, because it would enable a company to improve supply chain management performance by focusing resources on the greatest opportunities for improvement.

Regarding **Claim 7**, Powers does not teach:

**analyzing the performance based on improvements required by a manufacturer.**

PRTM teaches:

**analyzing the performance based on improvements required by a manufacturer.**

Reference E page 1 paragraph 4 line 3-5, private scorecards for automotive suppliers provide analysis of performance based on improvements required. The required improvements are necessary for an auto supplier to deliver on their value proposition.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers regarding evaluation of suppliers, to include analyzing the performance based on improvements required by a manufacturer, as taught by PRTM, because it would enable a company to achieve improvements necessary to deliver on its value proposition to customers.

Regarding **Claim 8**, Powers teaches:

**agreeing to future performance targets.**

Paragraph 60 line 9-11, agreed-to performance targets are entered into the system.

Paragraph 93, productivity is calculated based on performance achieved over agreed-to performance target.

Regarding **Claim 10**, Powers teaches:

**wherein the computer system is configured to communicate over a network and to receive evaluations submitted from a second computer system across the network.**

Paragraph 24 line 2-5, web pages can be downloaded to interface with invention.

Paragraph 23 line 1-3, client and server platforms for evaluation system are connected by a network.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations. This would require a second computer operating across the network.

Regarding **Claim 11**, Powers teaches:

**wherein the network is a public global communication network.**

Paragraph 23 line 1-3, client and server platforms for evaluation system are connected by a network, including the Internet, which is a public global communication network.

**Claim 22** is rejected under the same rationale as **Claim 5**.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. **Claims 15-20** are rejected under 35 U.S.C. 102(a) as being anticipated by PRTM.

Regarding **Claim 15**, PRTM discloses:

**a computer system including a data storage device,**

Reference E page 2 paragraph 2, PMG uses a database for storing benchmarking data for their online benchmarking service.

Reference D paragraph 2 line 3-6, PMG provides an online benchmarking service that utilizes a computer system to enter data sets and receive data reports.

**the data storage device storing data for a supplier performance among suppliers supplying a class of components comprising:**

Reference E page 2 paragraph 2, PMG uses a database for storing supply chain management benchmarking data.

Reference E page 2 paragraph 1, PMG's benchmarking data is mapped against the SCOR model, which includes data for a supplier performance among suppliers supplying a class of components.

Reference C page 22, "Supply Chain Scorecard" provides "performance versus competitive population" which is the data for a supplier performance among suppliers supplying a class of components.

**quality** (Reference C page 22 Item 1, Delivery Performance/Quality is a SCOR Level 1 metric),

**cost** (Reference C page 22 Item 2, Cost is a SCOR Level 1 metric),

**availability** (Reference C page 22 Item 3, Fill Rates measure how orders are filled and hence measures availability of product),

**service performance** (Reference C page 22 Item 4, Delivery

Performance to Commit Date measures level of service provided to customers once a delivery date has been committed) and

**top performers** (Reference A, Paragraph B, Line 4, best practices of top performers).

Regarding **Claim 16**, PRTM discloses:

**a server wherein the computer system and the server are configured to communicate over a network and receive evaluations submitted from a second computer system across the network.**

Reference D page 1 paragraph 2 line 5-6, participants in the online benchmarking study can submit data, ie supply chain evaluations, from their computer over the internet to the PRTM server that is providing the benchmarking web service. See also Reference A Paragraph A Lines 2-3.

Regarding **Claim 17**, PRTM discloses:

**determining a best supplier in a class of suppliers, wherein the class of suppliers are those suppliers supplying a component to a manufacturer, the determining being performed by a computer system.**

Reference E page 2 paragraph 2, PMG uses a web-accessible database for storing supply chain management benchmarking data.

Reference E page 2 paragraph 1, PMG's benchmarking data is mapped against the SCOR model, which includes data for a supplier performance among suppliers

supplying a class of components. Since the SCOR model is provided online, the determining of a BIC supplier is performed by a computer system.

Reference D page 2 paragraph 2 line 4-6, PMG provides benchmarking, including determining 'best in class' or BIC, as part their online benchmarking service.

Regarding **Claim 18**, PRTM discloses:

**determining an indicia of quality of a component supplied by the supplier to the manufacturer.**

Reference C Item 1, Delivery Performance/Quality is a SCOR Level 1 Scorecard metric for measuring quality of a component supplied by a supplier to a manufacturer. In this case quality is primarily measured by perfect order fulfillment.

Regarding **Claim 19**, PRTM discloses:

**determining a cost of a component provided by a supplier**

Reference C Item 2, Cost is a Level 1 Scorecard metric comprising three different areas of supply chain cost directly associated with components supplied.

Regarding **Claim 20**, PRTM discloses:

**determining an indicia of availability of components supplied by a supplier.**

Reference C, Item 3, Fill Rate measures how available components are when an order is filled.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS

JGS 9-27-05

Romain Jeanty  
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